IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION No.7817 OF 2005

Between:

Amitha Steel (P) Limited, Plot No. 62/A-1, D.No. 1-168/1, Phase-I, IDA, Jeedimetla, Ranga Reddy District, rep. by its Managing Director

Mr. Sajjan Kumar Agarwal, S/o Dhanshigh Rai Agarwal,

aged about 70 years.

..... PETITIONER

AND

The Manager and Commissioner, Andhra Pradesh Industrial Infrastructure Limited, Quthbullapur Industrial Area Local Authority, Jeedimetla, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to pass an order, direction or writ more particularly one in the nature of writ of mandamus declaring the action of the respondent in issuing the Distraint Warrant under Rule 30(3) of the Schedule - II to the A.P. Municipalities Act, 1965, dated 22-12-2004 as arbitrary, illegal, unjustified and in violation of the provisions of the A.P. Municipalities Act, 1965 and set aside the same.

Counsel for the Petitioner : MR.K.LAKSHMAN

Counsel for the Respondent : MR.E.MADAN MOHAN RAO

The Court made the following :

O R D E R

(Per Sri Justice J.Chelameswar)

The petitioner filed this writ petition with a prayer as follows:

> *"For the reasons stated in the accompanying affidavit it is therefore prayed that this Hon'ble Court may be pleased to pass an order, direction or writ more particularly one in the nature of writ of mandamus declaring the action of the respondent in issuing the Distraint Warrant under Rule 30(3) of the Schedule - II to the A.P. Municipalities Act, 1965, dated 22.12.2004 as arbitrary, illegal, unjustified and in violation of the provisions of the A.P. Municipalities Act, 1965 and set aside the same and pass such other and further orders which this Hon'ble Court deems fit and proper in the circumstances of the case and in the interest of justice."*

The respondent issued a distraint warrant dated 22.12.2004 invoking Rule 30(3) of Schedule II to the A.P. Municipalities Act, 1965 demanding an amount of Rs.2,23,250/- towards tax payable by the petitioner – a private limited company, on an asset held by it for the period indicated in the said warrant.

The principal submission in the writ petition is that the warrant is not preceded by a show-cause notice, which is mandatory as per the relevant rules. The respondent filed a counter and made a categoric statement that the show-cause notice was in fact issued and received by the petitioner.

However, in the distraint warrant along with the tax due it appears that the

respondent also demanded distraint fee of Rs.21,795/, which has been asserted by the petitioner in para 8 of the writ affidavit. Learned counsel for the respondent was asked to clarify as to the authority of law under which such a distraint fee is sought to be collected.

Learned counsel for the respondent Mr.E.Madan Mohana Rao submitted that the demand of distraint fee is authorized under the relevant rules, but stated that if the petitioner undertakes to pay the tax demanded within the reasonable time, the respondent would waive the collection of the distraint fee.

Learned counsel for the petitioner submitted that if the petitioner is granted two months time to pay the tax, the petitioner would be able to pay the tax demanded by the respondent.

In the circumstances, we do not propose to go into the merits of the writ petition and the same is disposed of staying the enforcement of the impugned distraint warrant for a period of two months from today on condition that the petitioner pays an amount of Rs.one lakh on or before 25th May, 2005 and the balance amount of Rs.1,23,250/- on or before 25th June, 2005, and on such payment, the respondent undertakes to waive the distraint fee. In the event of failure on the part of the petitioner to make the payment of either of the instalments as indicated above, the respondent would be at liberty to collect the amount in accordance with law. No costs.

JUSTICE J.CHELAMESWAR

JUSTICE GHULAM MOHAMMED

20th APRIL, 2005

PGS

To

1. The Manager and Commissioner, Andhra Pradesh Industrial Infrastructure Limited, Quthbullapur Industrial Area Local Authority, Jeedimetla, Hyderabad.

2. 2 CD copies.

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

GHULAM MOHAMMED

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(Per Sri Justice J.Chelameswar)

20th APRIL, 2005